

THE SENATE
TWENTY-THIRD LEGISLATURE, 2005
STATE OF HAWAII

S.B. NO. 1262
VETO
S.D. 1
H.D. 2
C.D. 1

A BILL FOR AN ACT VETO OVERRIDE

RELATING TO THE WAIANAE COAST.

ACT No. 6
Approved: [Signature]
Dated: July 12, 2005

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds it a matter of concern
2 that along the Waianae coast, the growing population of west
3 Oahu and the visitor industry are affecting the traditional uses
4 of the area and are having cumulative economic, environmental,
5 social, and cultural effects on the many communities along this
6 coastline.

7 The legislature finds that the increased usage of beach
8 parks and state boating facilities to accommodate commercial
9 ocean recreation activities between Kalaeloa and Kaena has had a
10 significant impact on traditional commercial fishing activities,
11 as well as other non-commercial ocean recreational activities.

12 The legislature finds that the ocean waters in this area
13 should be designated by the department of land and natural
14 resources as an ocean recreation management area to reduce user
15 conflicts, maintain overall public safety, and to regulate
16 commercial activities by placing limitations on the locations,
17 times, and types of ocean recreation activities that are
18 permitted.

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1 The purpose of this Act is to place a moratorium on the
2 issuance of new commercial vessel permits in state small boat
3 harbors involving ocean-related activities for ocean waters
4 between Kalaeloa point and Kaena point until the boundaries of a
5 Kalaeloa to Kaena ocean recreation management area are
6 designated and administrative rules on recreational boating
7 activities and commercial vessel activities are adopted.
8 However, the completion of a baseline environmental study is a
9 prerequisite to the establishment of the boundaries of an ocean
10 recreation management area and the adoption of the ocean
11 recreation management area rules. The limited resources of the
12 state prohibit funding for this baseline environmental study at
13 this time. Accordingly, the legislature intends to seek a
14 funding source to ensure that this important baseline
15 environmental study is performed.

16 SECTION 2. The department of land and natural resources
17 shall not issue any state small boat harbor facility commercial
18 permits for vessels engaged in ocean use activities in the area
19 from Kalaeloa point to Kaena point that would exceed the total
20 number of permits already issued as of the effective date of
21 this Act, until the boundaries of an ocean recreational
22 management area for the area from Kalaeloa point to Kaena point

1 are determined and ocean recreation management area rules are
2 adopted pursuant to this section and chapter 91, Hawaii Revised
3 Statutes.

4 SECTION 3. The department shall prepare a baseline
5 environmental study as an informational document to be used for
6 the preparation of draft ocean recreation management area rules
7 in accordance with the following procedures. The baseline
8 environmental study shall include:

9 (1) A summary sheet with a concise description of the
10 following:

- 11 (A) Significant beneficial and adverse impacts of
12 ocean use activities in the area from Kalaeloa
13 point to Kaena point (including cumulative
14 impacts and secondary impacts);
- 15 (B) Proposed mitigation measures;
- 16 (C) Alternatives considered;
- 17 (D) Unresolved issues; and
- 18 (E) Compatibility with land use plans and policies,
19 and listing of permits or approvals;

20 (2) A separate and distinct section that includes a
21 statement of purpose and need for the designation of
22 an ocean recreation management area;

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1 (3) The following information, to the extent necessary for
2 evaluation and review of the cultural, environmental,
3 social, and economic impacts:

4 (A) A detailed map of the area from Kalaeloa point to
5 Kaena point;

6 (B) A statement of objectives;

7 (C) A general description of the area's technical,
8 economic, social, and environmental
9 characteristics;

10 (D) Public funds or lands to be used for the
11 designation;

12 (E) Phasing and timing of the designation;

13 (F) A summary of technical data, diagrams, and other
14 information necessary to permit an evaluation of
15 potential environmental impact by government
16 agencies and the public; and

17 (G) A historic perspective;

18 (4) The following restrictions or limitations on ocean use
19 or private recreational activities, set forth in
20 detail:

Particular attention shall be given to alternatives that might enhance environmental quality or avoid, reduce, or minimize some or all of the adverse environmental effects, costs, and risks and

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1 recreational and commercial use conflicts. Examples
2 of alternatives include:

3 (A) No action;

4 (B) Requiring actions of a significantly different
5 nature that would provide similar benefits with
6 different environmental effects;

7 (C) Those related to different boundaries or details
8 of the proposed area that present different
9 environmental effects; and

10 (D) Postponing the designation of the area pending
11 further study.

12 In each case, the analysis shall be sufficiently
13 detailed to allow the comparative evaluation of the
14 environmental benefits, costs, and risks of the
15 proposed area designation and each reasonable
16 alternative;

17 (7) A description of setting of any ocean recreation
18 management area, including a description of the
19 environment in the vicinity of the area, as it exists
20 before the designation of the area, from both a local
21 and regional perspective. Special emphasis shall be
22 placed on environmental resources that are rare or

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1 unique to the region and the area (including natural
2 or human-made resources of historic, archaeological,
3 or aesthetic significance). Specific reference to
4 related land-based projects, public and private,
5 existent or planned in the region shall also be
6 included for purposes of examining the possible
7 overall cumulative effects of the designation of the
8 area. The department shall identify, where
9 appropriate, population and growth characteristics of
10 the affected region and any population and growth
11 assumptions used to justify the action and determine
12 secondary population and growth effects resulting from
13 the proposed designation and its alternatives. In any
14 event, it is essential that the sources of data used
15 to identify, qualify, or evaluate any and all
16 cultural, environmental, societal, and economic
17 consequences be expressly noted;

18 (8) A statement of the relationship of the proposed
19 designation of the area to land use plans, policies,
20 and controls for the affected area. Discussion of how
21 the proposed designation may conform or conflict with
22 objectives and specific terms of approved or proposed

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land use plans, policies, and controls, if any, for the area affected shall be included. Where a conflict or inconsistency exists, the baseline environmental study shall describe the extent to which the department has reconciled its proposed designation with the plan, policy, or control and the reasons why the department has decided to proceed, notwithstanding the absence of full reconciliation;

(9) In a separate and distinct section, a description of the relationship between local short-term uses of the marine environment and the maintenance and enhancement of long-term productivity of the marine environment. The extent to which the proposed action involves trade-offs among short-term and long-term gains and losses shall be discussed. The discussion shall include the extent to which the proposed designation forecloses future options, narrows the range of beneficial uses of the environment, or poses long-term risks to health or safety. In this context, short-term and long-term do not necessarily refer to any fixed time periods, but shall be viewed in terms



(12) All probable adverse environmental effects that cannot be avoided and a statement addressing these problems. Any adverse effects, such as water or air pollution, urban congestion, user conflicts, threats to public

1 health, or other consequences adverse to environmental
2 goals and guidelines established by environmental
3 response laws, coastal zone management laws, pollution
4 control and abatement laws, and environmental policy
5 such as that found in chapters 128D, 205A, 342B, 342C,
6 342D, 342E, 342F, 342G, 342H, 342I, 342J, 342L, 342P,
7 and 344, Hawaii Revised Statutes, shall be included,
8 including those effects discussed in other actions of
9 this paragraph that are adverse and unavoidable under
10 the proposed designation and rules. Also, the
11 rationale for proceeding with a proposed designation,
12 notwithstanding unavoidable effects, shall be clearly
13 set forth in this section;

14 (13) Other interests and considerations of governmental
15 policies that are thought to offset the adverse
16 effects of the proposed designation. The baseline
17 environmental study shall also indicate the extent to
18 which these stated countervailing benefits could be
19 realized by following reasonable alternatives to the
20 proposed designation that would avoid some or all of
21 the adverse environmental effects;

(14) Mitigation measures proposed to avoid, minimize, rectify, or reduce impacts and user conflicts, including provision for compensation for losses of cultural, community, historical, archaeological, and fish and wildlife resources, including the acquisition of land, waters, and interests therein. Description of any mitigation measures to reduce significant, unavoidable, or adverse effects to insignificant levels, and the basis for considering these levels acceptable shall be included. Where a particular mitigation measure has been chosen from among several alternatives, the measures shall be discussed and reasons given for the choice made. Included, where possible and appropriate, shall be specific reference to the timing of each step proposed to be taken in the mitigation process, what performance bonds, if any, may be posted, and what other provisions are proposed to ensure that the mitigation measures will, in fact, be taken;

(15) A separate and distinct section that summarizes unresolved issues and contains either a discussion of how the issues will be resolved prior to commencement

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1 of the designation or what overriding reasons there
2 are for proceeding without resolving the problems;

3 (16) A separate and distinct section that contains a list
4 identifying all governmental agencies, other
5 organizations, and private individuals consulted in
6 the preparation of the baseline environmental study
7 and the identity of the persons, firms, or agency
8 assisting in the preparation of the baseline
9 environmental study, by contract or other
10 authorization, shall be disclosed; and

11 (17) A separate and distinct section that contains
12 reproductions of all substantive comments and
13 responses made during the consultation process. A
14 list of those persons or agencies who were consulted
15 and had no comment shall be included in the baseline
16 environmental study.

17 SECTION 4. The final designation of the ocean recreation
18 management area and rules for this area shall be adopted by the
19 department pursuant to chapter 91, Hawaii Revised Statutes, and
20 this Act and shall include any sub-areas or restricted areas.
21 The department shall maintain rulemaking files that shall
22 include but not be limited to the following:

- 1 (1) All letters received containing substantive questions,
2 comments, or recommendations and, as applicable,
3 summaries of any scoping meetings held;
- 4 (2) A list of persons, organizations, and public agencies
5 commenting on the draft rules;
- 6 (3) The responses of the department to each substantive
7 question, comment, or recommendation received during
8 the rules adoption process; and
- 9 (4) The final rules written in a format that allows the
10 reader to easily distinguish changes made to the text
11 of the draft rules.

12 SECTION 5. For the purposes of this Act, "ocean use
13 activities" means commercial operation of thrill craft,
14 high-speed boating, para-sailing, water sledding, sailing and
15 snorkeling tours, glassbottom boat tours, dolphin tours, or any
16 other similar commercial ocean recreational activity for hire.

17 SECTION 6. The department of land and natural resources
18 shall submit the baseline environmental study to the legislature
19 not later than twenty days prior to the convening of the regular
20 session of 2007.

